

REMARKS

The present amendment is in response to the Advisory Action dated July 10, 2007 and the Advisory Action dated May 17, 2007. In the July 10, 2007 Advisory Action, the claim amendments were not entered because they raised new issues requiring additional consideration. In the May 17, 2007 Advisory Action, the Examiner maintained the rejection of claims 1-24.

In the present amendment, claims 1, 8, 9, 13, 16-18, 20, and 23-24 have been amended and claim 25 is new. Accordingly, claims 1-25 are pending in the present application with claims 1, 8, 13, 20, and 25 being the independent claims. Reconsideration and allowance of pending claims 1-25 in view of the amendments and the following remarks are respectfully requested.

A. Criss Does Not Anticipate Claims 1, 8, 13, or 20

The May 17, 2007 Advisory Action maintains the rejection of the independent claims 1, 8, 13, and 20. The Examiner cites Criss for the proposition that it teaches receiving an end of session indicator from the network, namely using an FTP protocol. The Examiner states that the FTP protocol runs over TCP, which uses a number of end of session identifiers (such as the FTP 226 and 426 response codes). The Examiner further states that Criss is configured to detect an end of session indicator sent by the network, such as a TCP close connection, which "are not necessarily requested, but indicators in response to a particular condition (e.g., bad connection)." Applicant asserts that claims 1, 8, 13, and 20 (and their respective dependent claims) are patentable over Criss as follows.

Criss discloses that a mobile unit initiates a file transfer request by sending a File Request Packet to an FTP server. The mobile unit then determines if it received the files within a predetermined amount of time. If it received the files, then it stores the files. If it did not receive the files then it retransmits the same file request. (Criss, Paragraph 0087). If after five times, the file is still not received, the processor allows the mobile device to continue operating with a prior version of software that the above process was attempting to update. (Criss, Paragraph 0087).

Criss does not teach or suggest the present claims for several reasons. First, the end of session identifier in the present claims is an expected end of session identifier that is received without a prior request. As paragraph 0087 of Criss shows, the described FTP exchange requires the mobile device to send at least five prior requests for the packet before it gives up and continues operating with the old version of the software.

Moreover, the Examiner has cited the "bad connection" indicators in TCP to read on the presently claimed expected end of session identifier, but a bad connection indication is not expected by a mobile device. In fact, a typical mobile device expects to operate normally and only upon a fault condition or other unexpected error will the bad connection indicator be sent. In that regard, the FTP 226 and 426 response codes cited on page 3 of the May 17, 2007 Advisory Action are not "expected" end of session identifiers because they happen in unusual and unanticipated circumstances (e.g., line down, system error, bad weather, etc).

Furthermore, the expected end of session identifier is further limited in the fact that in all of the claims in some way or another, its receipt has the effect of terminating the OTA programming call. On the contrary, in paragraph 0087 of Criss, the lack of the FTP response "allows the mobile terminal 36 to continue to operate with the existing version of software therein." As such, the response in Criss is not an end of session identifier, but merely a response within the context of a continuing session. Hence, Criss is not teaching an expected end of session identifier because the lack of receipt of such a message and/or the timeout after five prior requests for the message causes the mobile device to continue to operate (not end a session). On the other hand, the expected end of session identifier as presently claimed has the opposite effect, which is to close the channel, terminate the call, or otherwise end the session.

Accordingly, Applicant asserts that the claims are presently in condition for allowance and a notice of allowance for independent claims 1, 8, 13, and 20 and their respective dependent claims is respectfully requested.

B. End of Session Indicator

In the May 17, 2007 Advisory Action the Examiner indicated that “an end of session indicator can be a number of things given a broad interpretation.” Applicant would like to clarify.

The present invention is generally related to over the air programming of mobile subscriber units and specifically related to termination of over the air programming calls. Often times, over the air programming calls are not properly terminated, resulting in negative effects such as unnecessary battery use on the mobile subscriber unit, missed incoming calls, and the like.

According to the specification, the end of session indicator can be used in a number of situations where over the air programming calls are often not properly terminated. For example, over the air programming calls are frequently not properly terminated when transitioning from one network (digital) to another network (analog). This type of multi-situational use does not suggest that the end of session indicator itself should be given a broad interpretation as stated in the May 17, 2007 Advisory Action. Thus, the various FTP response codes cited in the May 17, 2007 Advisory Action do not disclose the claimed end of session indicator.

C. New Claim 25

New Claim 25 is in a condition for allowance for at least the reasons cited in subsection A. Moreover, new claim 25 states that the expected end of session indicator is expected to be detected without a prior request sent via the antenna or without an occurrence of a fault condition. As such, new claim 25 additionally distinguishes the expected end of session identifier from the FTP 226 and FTP 426 response codes cited on page 3 of the May 17, 2007 Advisory Action because the response codes are sent in the case of a fault condition.

Accordingly, Applicant asserts that new claim 25 is presently in condition for allowance and a notice of allowance for new claim 25 is respectfully requested.

D. Conclusion

For all the foregoing reasons, an early allowance of claims 1-24 pending in the present application and new claim 25 is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

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